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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,539	04/15/2004	Masanori Takita	252009US3	6545
22850 7590 05/11/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER MORGAN JR, JACK HOSMER				
ART UNIT 3782		PAPER NUMBER		
NOTIFICATION DATE 05/11/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/824,539

Applicant(s)

TAKITA ET AL.

Examiner

JACK H. MORGAN JR

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 3, 5 and 15-20 is/are allowed.
- 6) ☒ Claim(s) 4, 7 and 8 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Fukushi (JP 49-12112). Fukushi discloses a gusset bag with a pair of main faces (4) and a pair of inwardly folding side faces (See Fig 6, 1) with a deformable wire like member (3) having two vertical wire-like members (3') attached exclusively along a lateral edge of the bag, as well as a lateral wire-like member attached to the side face to form an inverted angular "U" along the top of the side face (See Fig 6). Examiner notes that the wire-like members do not extend to the top edge of the gusset bag, as there is a small portion of bag above the wire members.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima (JP 49-12112) in view of Yutaka (JP 08-244795). Fukushima discloses all the limitations of the claim except for a projection for creating a level difference is provided across the centerline of each of the side faces below an upper end output opening. Yutaka discloses a gusset bag with a projection (5) which creates a level difference provided in order to assist in the opening of the bag (abstract). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Fukushima with the projection of Yutaka in order to make it easier to open the bag.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima (JP 49-12112) in view of Cvacho (US 3,269,642). Fukushima discloses all the limitations of the claim except for each of the side faces having a vertical fin-like rib projecting on the outer side thereof along the centerline. Cvacho discloses a gusset bag of similar structure to the bag of Fukushima (Fig 10) having a side face formed with a central fin-like rib in order to form the bag with an outward folding gusset. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the gusset bag of Fukushima with a fin-like rib in the center of the side panel as taught by Cvacho in order to form the gussets with an outward closing fold.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima (JP 49-12112) in view of Ichiro (JP 02-242750). Fukushima discloses a gusset bag with a pair of main faces (4) and a pair of inwardly folding side faces (See Fig 6, 1) with a deformable wire like member (3) having two vertical wire-like members (3') attached

exclusively along a lateral edge of the bag, as well as a lateral wire-like member attached to the side face to form an inverted angular "U" along the top of the side face (See Fig 6). To the extent to which Fukushi may not be read as having wire-like members attached exclusively along each lateral edge of the gusset bag, Ichiro discloses a bag having only vertical wire-like members (Fig 1, 15) along a top portion of the bag, which have the added advantage of allowing a twist closure to the bag. Therefore it would have been obvious to replace the three wire-like members of Fukushi with the two wire-like members of Ichiro in order to allow a twist type closure, as well as saving material.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushi (JP 49-12112) in view of Ichiro (JP 02-242750) as applied to claim 4 above and further in view of Yutaka (JP 08-244795). Fukushi discloses all the limitations of the claim except for a projection for creating a level difference is provided across the centerline of each of the side faces below an upper end output opening. Yutaka discloses a gusset bag with a projection (5) which creates a level difference provided in order to assist in the opening of the bag (abstract). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Fukushi with the projection of Yutaka in order to make it easier to open the bag.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushi (JP 49-12112) in view of Ichiro (JP 02-242750) as applied to claim 4 above and further

in view of Cvacho (US 3,269,642). Fukushi as modified above discloses all the limitations of the claim except for each of the side faces having a vertical fin-like rib projecting on the outer side thereof along the centerline. Cvacho discloses a gusset bag of similar structure to the bag of Fukushi (Fig 10) having a side face formed with a central fin-like rib in order to form the bag with an outward folding gusset. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the gusset bag of Fukushi with a fin-like rib in the center of the side panel as taught by Cvacho in order to form the gussets with an outward closing fold.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushi (JP 49-12112) in view of Ichiro (JP 02-242750) and Anonymous (JP 53-72610). Fukushi discloses a gusset bag with a pair of main faces (4) and a pair of inwardly folding side faces (See Fig 6, 1) with a deformable wire like member (3) having two vertical wire-like members (3') attached exclusively along a lateral edge of the bag, as well as a lateral wire-like member attached to the side face to form an inverted angular "U" along the top of the side face (See Fig 6). To the extent to which Fukushi may not be read as having wire-like members attached exclusively along each lateral edge of the gusset bag which do not extend to the top edge of the bag, Ichiro discloses a bag having only vertical wire-like members (Fig 1, 15) along a top portion of the bag, which have the added advantage of allowing a twist closure to the bag. Therefore it would have been obvious to replace the three wire-like members of Fukushi with the two wire-like members of Ichiro in order to allow a twist type closure, as well as saving material. Further,

Anonymous discloses that it is equally well known to provide wire-members which extend to the top edge of the bag (Fig 1) as those which extend not all the way to the top of the bag (Figs 2 and 3), which would allow a material savings in creation of the bag. Therefore it would have been obvious to one of ordinary skill in the art to provide the bag of Fukushi as modified above with the wire-member not extending to the top edge of the bag as taught by Anonymous in order to save on material.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushi (JP 49-12112) in view of Ichiro (JP 02-242750) and Anonymous (JP 53-72610) as applied to claim 4 above and further in view of Yutaka (JP 08-244795). Fukushi discloses all the limitations of the claim except for a projection for creating a level difference is provided across the centerline of each of the side faces below an upper end output opening. Yutaka discloses a gusset bag with a projection (5) which creates a level difference provided in order to assist in the opening of the bag (abstract). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Fukushi with the projection of Yutaka in order to make it easier to open the bag.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushi (JP 49-12112) in view of Ichiro (JP 02-242750) and Anonymous (JP 53-72610) as applied to claim 4 above and further in view of Cvacho (US 3,269,642). Fukushi as modified above discloses all the limitations of the claim except for each of the side faces

having a vertical fin-like rib projecting on the outer side thereof along the centerline. Cvacho discloses a gusset bag of similar structure to the bag of Fukushi (Fig 10) having a side face formed with a central fin-like rib in order to form the bag with an outward folding gusset. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the gusset bag of Fukushi with a fin-like rib in the center of the side panel as taught by Cvacho in order to form the gussets with an outward closing fold.

Allowable Subject Matter

10. Claims 2, 3, 5 and 15-20 are allowed.
11. Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments, see Remarks, filed December 10, 2008, with respect to claims 2, 3, 5-7 and 15-20 have been fully considered and are persuasive. The rejections of July 11, 2008 have been withdrawn.
13. Applicant's arguments filed 10 December 2008 have been fully considered but they are not persuasive. Applicant argues that Fukushi does not disclose a wire

member which does not extend to the top edge of the bag. Examiner notes (as newly set forth above) that Fukushi does disclose bag material between the wire member and the top edge of the bag, albeit minor. Also note the new 103(a) rejection with Anonymous (JP 53-72610) as responding to this amendment.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented

claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK H. MORGAN JR whose telephone number is (571)272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782